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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/714,786

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W. Michael Bissonnette

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/714,786	BISSONNETTE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Andrea M. Valenti	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 53-72 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 53-72 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

Claims 54, 59-61, 64-71 are objected to because of the following informalities:

Claims 54, 59, 60, 61, 64, 65, 66, 67, 68, 69, 70, 71 depend from canceled Claim 1, it appears that this is a typographical error and it should depend from Claim 53.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 53, 54, 55, 56, 58, 59, 64, 65, 67, 68, 69, 70, 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,557,884 to Deppe in view of U.S. Patent No. 3,812,619 to Wood.

Regarding Claims 53, 64, 65, 70 and 71, Deppe teaches said aeroponic or hydroponic receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said lower receptacle portion is adapted to fit in said aperture; and wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip (Deppe Fig.3). Deppe teaches a hydrophilic substrate inside of the receptacle (Deppe Col.1 line 15, clay), but is silent a seed-support medium comprising: at least one seed in contact with a hydrophilic cellular substrate wherein said medium is storable without germination of said seed.

However, Wood teaches a seed-support medium comprising: at least one seed in contact with a dry hydrophilic cellular substrate wherein said medium is storable without germination of said seed (Wood Col. 1 line 29-33; Col. 1 line 60-61; Col. 8 line 54-55) contained within a rigid, modular receptacles (Wood Col. 9 line 26, plant pot). It would have been obvious to one of ordinary skill in the art to modify the teachings of Deppe with the teachings of Wood at the time of the invention since the modification is merely the substitution of known alternate substrate yielding predictable results. It would have been obvious to one of ordinary skill in the art to modify the teachings of Deppe with the teachings of Wood to protect dormant seeds and to sustain germination as taught by Wood (Wood Col. 1 line 34-37).

Regarding Claims 54, 55, 56, Deppe as modified teaches further comprising a substrate (Wood Col.9 line 12-13, fiber/mulch) in contact with said seed to form a seed-bearing substrate and said seed-bearing substrate is in contact with said hydrophilic cellular substrate.

Regarding Claim 58, Deppe as modified the seed-bearing substrate further comprises adjuvants (Wood Col. 9 line 10 fertilizer).

Regarding Claim 59, Deppe as modified teaches the hydrophilic cellular substrate is a synthetic polymer (Wood Col. 1 line 53-60).

Regarding Claim 67, Deppe as modified teaches the hydrophilic cellular substrate comprises a horticultural foam (Wood abstract).

Regarding Claim 68, Deppe as modified teaches the receptacle is porous to aqueous solution and to a root growing from a plant germinated from said seed (Deppe Fig. 3 #35).

Regarding Claim 69, Deppe as modified teaches hydrophilic cellular substrate comprises urethane pre-polymer reacted with one or more materials selected from the group consisting of: peat, bark and mixtures of peat and bark (wood Col. 9 line 34 , soil; Col. 9 line 11-12, soil bases, mulch, cellulosic).

Claims 57, 61-63 and 72 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,557,884 to Deppe in view of U.S. Patent No. 3,812,619 to Wood as applied to claim 54 above, and further in view of U.S. Patent No. 4,124,953 to Patton.

Regarding Claims 61 and 72, Deppe as modified is silent on comprising a seal upon said receptacle. However, Patton teaches a seal upon a receptacle (Patton Fig.1 #24). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Deppe with the teachings of Patton at the time of the invention to protect the seeds and medium during storage and transport as taught by Patton and later for promotion of germination as taught by Patton (Patton Fig. 5 and Col. 1 line 5-10). The modification is merely combining prior art elements according to known methods to yield predictable results.

Regarding Claim 62, Deppe as modified teaches the seal is selected from the group consisting of opaque, transparent, and translucent (Patton Col. 1 line 8).

Regarding Claim 63, Deppe as modified teaches said seal regulates moisture during germination of said seed (Patton inherently performs this function Fig. 5).

Regarding Claim 57, Deppe as modified although teaches additives that are capable of functioning as adhesives is silent on explicitly teaching seed-bearing substrate is an adhesive. However, Patton teaches an adhesive in contact with a cellular substrate (Patton Col. 3 line 15). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Deppe with the teachings of Patton at the time of the invention to secure the seeds in place as taught by Patton.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,557,884 to Deppe in view of U.S. Patent No. 3,812,619 to Wood as applied to claim 54 above, and further in view of U.S. Patent Pub. No. US 2002/0104263 to Chang.

Regarding Claim 66, Deppe as modified is silent on said receptacle is hydrophilic. However, Chang teaches a hydrophilic receptacle for receiving seeds and growth medium that is porous, cup shaped, rigid and modular (Chang paragraph [0018] and Fig. 3 and 4). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Deppe with the teachings of Chang at the time of the invention for the advantage of providing good aeration, recyclable and resistant to impact breakage as taught by Change (Change paragraphs [0008], [0010], [0011]).

Claims 53 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,557,884 to Deppe in view of U.S. Patent No. 6,615,539 to Obonai et al.

Regarding Claims 53 and 60 Deppe teaches said aeroponic or hydroponic receptacle comprising: an upper receptacle portion; and a lower receptacle portion; wherein said lower receptacle portion is adapted to fit in said aperture; and wherein said upper receptacle portion comprises a lip adapted to support said receptacle in said aperture to said lip (Deppe Fig.3). Deppe teaches a hydrophilic substrate inside of the receptacle (Deppe Col.1 line 15, clay), but is silent a seed-support medium comprising: at least one seed in contact with a hydrophilic cellular substrate sponge wherein said medium is storable without germination of said seed.

However, Obonai teaches a hydrophilic cellular substrate sponge and seed in contact (Obonai Col. 16 line 24-28 and Col.1 line 55) for use in a receptacle. It would have been obvious to one of ordinary skill in the art to modify the teachings of Deppe with the teachings of Obonai at the time of the invention since the modification is merely the substitution of known alternate substrate yielding predictable results. Cost, availability, seed variety, and environment are all parameters for motivation of the modification.

### ***Response to Arguments***

Applicant's arguments with respect to claims 53-72 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Application/Control Number:  
10/714,786  
Art Unit: 3643

Page 8

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Andrea M. Valenti  
Primary Examiner  
Art Unit 3643

13 December 2007